

AUG 25 1997

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matters of)	
)	
Implementation of the)	
Telecommunications Act of 1996:)	CC Docket No. 96-193
)	
Reform of Filing Requirements)	
and Carrier Classifications)	

PETITION FOR RECONSIDERATION

Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell (the "SBC Telcos") respectfully request that the Commission reconsider two aspects of the Report and Order in the above-captioned proceeding.

I. THE COMMISSION MUST ALLOW ALL CAM UPDATES TO BE FILED ONCE A YEAR.

First, the SBC Telcos request that the Commission reconsider its decision to continue to require local exchange carriers ("LECs") to file changes to their Cost Allocation Manuals ("CAMs") more frequently than on an annual basis. This ruling is contrary to the directive contained in Section 402(b)(2)(B) of the Telecommunications Act of 1996 (the "1996 Act") that:

The Commission shall permit any common carrier . . . to file Cost Allocation Manuals . . . annually, to the extent such carrier is required to file such manuals . . .

As the Report and Order admits, "Section 402(b)(2)(B) supersedes our requirement that Cost Allocation Manuals be filed more frequently than annually."¹ Despite this

¹ Report and Order, ¶21.

admission, the Commission retains the requirement that LECs file revisions to their CAMs at the time of any changes in cost apportionment tables or time reporting procedures. The revised rule is not consistent with Section 402(b)(2)(B). The revised rule, Section 64.903(b), provides:

Carriers must update their Cost Allocation Manuals at least annually, except that changes to the cost apportionment table and to the description of time reporting procedures must be filed at least 15 days before the carrier plans to implement the changes.²

Under the prior rule, there were also two types of CAM filings: (1) quarterly updates and (2) updates required prior to any changes to cost pools or time reporting procedures. Both of these are CAM filings and they both follow the same CAM filing procedures. In fact, the format of the two types of CAM filings are the same because the Common Carrier Bureau ("Bureau") adopted uniform format and filing procedures in RAO Letter 19, released December 23, 1991 ("RAO 19"), a copy of which is attached as Exhibit "A".

The Commission has decided that the only change required by Section 402(b)(2)(B) is to change from the quarterly updates to an annual schedule. However, after this rule change, Section 64.903(b) will continue to require that LECs make CAM filings associated with cost pool and time reporting changes "more frequently than annually."³ Therefore, the Report and Order has failed to reconcile the rule with the 1996 Act's mandate that the Commission permit carriers to make CAM filings only on an annual basis. In effect, the Report and Order only addresses the annual CAM filing requirement with respect to a limited type of CAM

² 47 C.F.R. §64.903(b) (emphasis added).

³ Report and Order, ¶21.

filing, that is, filings regarding subjects other than cost pools or time reporting. Unless the cost pool or time reporting change required by the LEC (or by the Commission)⁴ coincides with the annual CAM filing, the rule will continue to require that the LEC submit a CAM filing in between annual CAM filings.

The Report and Order offers two explanations for its decision to continue requiring non-annual CAM filings despite the mandate of Section 402(b)(2)(B). First, the Commission claims that:

The formal amendment filings do not constitute CAMs; they are merely notice of CAM changes.

This unclear reasoning does not distinguish the quarterly updates from the cost pools/time reporting updates. As reflected in RAO 19, the same uniform format and filing procedure was required for both the quarterly updates and the cost pool/time reporting updates. Therefore, if the quarterly updates were “merely notice of CAM changes” and did not “constitute CAMs,” then the cost pool/time reporting updates would fall into the same

⁴ For example, the Commission has adopted orders requiring LECs to file changes to their CAMs, but these mandatory CAM changes have not coincided with a year-end CAM filing. The Commission has released several of these decisions since enactment of the 1996 Act. See, e.g., Petition for Declaratory Ruling by the Inmate Calling Service Providers Task Force, RM-8181, Order, 11 FCC Rcd 7362 (released February 20, 1996) (required CAM cost pool changes associated with inmate payphones by July 3, 1996), Revision of ARMIS Reports, AAD 96-34, Order, 11 FCC Rcd 5370 (released March 6, 1996) (ARMIS account changes required cost pool changes); Request of US WEST Communications, Inc. For a Limited Waiver of Section 22.903 of the Commission’s Rules, Order, 11 FCC Rcd 10905 (released April 17, 1996) (required CAM filing within 30 days); Pay Telephone Order, CC Docket No. 96-128, 11 FCC Rcd 20541 (released September 20, 1996) (required CAM cost pool changes associated with inmate payphones by February 14, 1997); 800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services, CC Docket No. 93-129, Report and Order, 11 FCC Rcd 15227 (released October 28, 1996) (required CAM filing within 30 days).

category.

Accordingly, if what the Commission intended by this explanation is that Section 402(b)(2)(B) does not limit the Commission's authority to require notice of CAM changes because it only requires the Commission to permit annual CAM filings, rather than notice of such filings, then the SBC Telcos contend that this is an illogical and arbitrary distinction. Under such a distinction between "CAM filings" and "notices of CAM filings," the only filing required by previous rules that would qualify as a CAM filing would be the filing of the entire CAM required by December 31. Under that interpretation of Section 402(b)(2)(B), the 1996 Act would not have required any changes at all in the CAM filing procedures. That is, under the Commission's apparent rationale, the cost pool/time reporting updates as well as the quarterly updates (with the exception of the year-end filing) would both be considered "notices of CAM changes," and thus, no changes would have been required by the 1996 Act. Not only would this be a strained interpretation of the statute, but it would also fail to give this provision any effect, contrary to the well-established rule of statutory construction.⁵

The Report and Order's second explanation for retaining more frequent than annual CAM filings is as follows:

Carriers must submit notice only if they choose to amend or modify an existing CAM. If a carrier decides neither to offer a new product or service nor to change its existing accounting or time reporting systems, it has no duty to provide notice.

This explanation also fails to distinguish the quarterly updates from the cost pool/time

⁵ Department of Treasury v. Fabe, 508 U.S. 491, 504 (1993); Ginsberg & Sons, Inc. v. Popkin, 285 U.S. 204, 208 (1932) ("if possible, effect shall be given to every clause and part of a statute").

reporting updates because it was also true in the case of quarterly updates that, if the LEC did not “choose to amend or modify an existing CAM” then it was not required to submit a quarterly revision. Instead, RAO 19 required that the LEC “file five copies of the letter with the Commission indicating that there are no changes.”⁶ In both cases, the CAM filing is triggered by a change in the LEC operations. In the case of the cost pool/time reporting update, the change relates to cost pool/time reporting procedures. In the case of quarterly updates, the change would relate to any other subject reported in the CAM.

The Report and Order fails to show why the cost pool/time reporting updates required by Section 64.903(b) is not superseded in the same manner as the quarterly updates. In both cases, the rules required CAM filings “more frequently than annually.” The statute does not draw any distinctions between different types of CAM filings and it is contrary to the statute for the Commission to draw distinctions that have no basis in the statutory language.

Aside from offering these two grounds for its contention that the revised rule is consistent with the 1996 Act, Commission also discusses generally the purpose of the cost pool/time reporting CAM filings. First of all, the Commission’s belief that a requirement is still useful cannot over-ride the clear directive of the statute. In any event, the Commission has not provided an adequate explanation of the importance of retaining this requirement, relative to other less burdensome procedures, such as those used for other types of CAM filings. According to the Report and Order, the purpose of this requirement is “to ensure that each carrier’s cost allocation and time reporting procedures reflect the carrier’s current

⁶ RAO 19, Appendix, ¶6.

accounting practices and to give the Bureau and third parties an adequate period to review CAM changes and offer comments.”⁷ The Commission states that the CAM “reporting requirements at issue here facilitate compliance with” various sections of the Communications Act.⁸ However, the Commission does not claim that more-frequent-than-annual filings are essential, nor has it shown why other less burdensome alternatives would not be sufficient to accomplish the regulatory objectives. For example, the Commission should be able to rely upon the same procedures used to assure that affiliate transactions comply with the accounting safeguards. Just as annual updates to the affiliate transaction section of the CAM are sufficient to enable the Commission to assure compliance, annual updates to cost pools and time reporting should also be sufficient, especially in view of other procedures such as independent audits and Commission audits.⁹ The Commission should not reject these and other less burdensome alternatives, such as the informal cooperative process suggested by Commenters or informal requests for information which would allow LECs to file CAMs only on an annual basis, while permitting the Commission to obtain information needed for the enforcement of the accounting safeguards.

⁷ Report and Order, ¶32.

⁸ In light of the Commission’s recent adoption of a permanent “no sharing” price cap plan, the SBC Telcos also question whether this type of advance review requirement is truly necessary to assure compliance with provisions such as Sections 201 through 205 of the Communications Act. The Report and Order, ¶32 & n. 89, does not adequately explain this conclusion.

⁹ In asserting the continuing usefulness of cost pool/time reporting CAM filings, the Commission does not distinguish the relative value of these versus other types of CAM filings such as those relating to affiliate transactions.

Designating the cost pool/time reporting CAM filing as a “notice requirement” and asserting that the purpose for this requirement remains valid does not make the retention of these CAM filings consistent with the 1996 Act. The Commission has only eliminated one of the two types of CAM filings required more frequently than on an annual basis. A requirement of the Commission’s rules is no less mandatory when it is triggered by conditions over which the LEC has a greater degree of control. Many Commission filings are triggered by a carrier’s changing circumstances, but when legislation requires the Commission to reduce the burden of such required filings, it is inappropriate to apply such statutory mandates in such a limited manner that fails to provide meaningful regulatory relief. The Commission should not make this regulatory relief contingent upon LECs maintaining the status quo in their cost pools and time reporting until each annual filing, especially when other less restrictive alternatives exist.

II. LECS SHOULD BE ALLOWED TO SUBMIT THE ANNUAL CAM FILING ON OR BEFORE DECEMBER 31.

Because of language in the Report and Order, the Commission needs to clarify that the annual CAM filing may be submitted on or before December 31. Paragraph 21 of the Report and Order states as follows:

Carriers are now required to file their annual updates on the last working day of each year.

In contrast, Section 64.903(b), as revised in the September 1996 Order and Notice, states as follows:

Annual cost allocation manual update shall be filed on or before the last working day of each calendar year.

The Commission should clarify Paragraph 21 of the Report and Order so that LECs may have the flexibility of submitting their annual CAM filings before December 31.

III. CONCLUSION.

For the reasons discussed above, the Commission should reconsider these two aspects of the Report and Order.

Respectfully Submitted,

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ATTORNEYS FOR PACIFIC BELL AND
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August 25, 1997

Federal Communications Commission

DA 91-1570

Sincerely,

Before the
Federal Communications Commission
Washington, D.C. 20554

RAO LETTER 19

Released: December 23, 1991

Responsible Accounting Officer

Re: CC Docket No. 86-111 Cost Allocation Manual -
Format and Filing Procedures

In the *Joint Cost Order*,¹ the Commission required certain telephone companies to file manuals containing the methods they use to separate the costs of providing regulated telephone service from the costs of nonregulated activities. These manuals must include: (a) a description of each of the company's nonregulated activities; (b) a list of all incidental activities and the justification for treating each as incidental; (c) a chart showing all of its corporate affiliates; (d) a statement which identifies affiliates that engage in or will engage in transactions with the carrier entity and which describes the nature, terms, and frequency of such transactions; and (e) for each USOA account and subaccount, detailed specifications of the cost categories to which amounts in the account or subaccount will be assigned and the basis on which each cost category will be apportioned.² In accordance with the *Joint Cost Order*, the local exchange carriers and the American Telephone and Telegraph Company filed cost allocation manuals (CAMs) containing the required information. However, the Order provided no format specifications, and therefore, the presentation of information in the CAMs differed widely. After a thorough review of the CAMs and of the numerous revisions made since their initial filing, we have determined that a uniform format and filing procedure would greatly improve the CAM review process. We also have determined that adding a matrix in the nonregulated activities section would enhance our regulatory review. In addition, we have found that a more detailed transmittal letter explaining the revisions would be helpful. The purpose of this letter is to establish the uniform format of the CAM and the standard procedure for filing revisions. These are included in the Appendix to this letter. This letter is issued pursuant to authority delegated under Section 0.291 of the Commission's Rules, 47 C.F.R. §0.291. Applications for review under Section 1.115 of the Commission's Rules, 47 C.F.R. §1.115 must be filed within 30 days of the date of this letter. See 47 C.F.R. §1.4(b)(2).

If you have any questions, please contact Alicia Dunnigan at (202) 634-1861.

Kenneth P. Moran
Chief, Accounting and Audits Division
Common Carrier Bureau

APPENDIX

A. Format of Cost Allocation Manual

1. Each Cost Allocation Manual (CAM) must contain seven sections as set forth below. Each section must be separated by a divider. Each section must contain a glossary of terms in the instances where the carrier uses technical terms or acronyms not readily understood. Any additional information a carrier deems necessary to the understanding of its manual must be included in the appropriate section of the CAM.

Table of Contents

- I. Introduction
- II. Nonregulated Activities
- III. Incidental Activities
- IV. Chart of Affiliates
- V. Transactions With Affiliates
- VI. Cost Apportionment Tables
- VII. Time Reporting Procedures

2. Each page of the CAM must contain the company name, a page number indicating the section number in Roman numerals and the Arabic page number (e.g., V-3) and the date the page was filed with the Commission. This information must be placed at the bottom of the page.

3. Section II, Nonregulated Activities, must contain a matrix which shows each nonregulated product and the accounts associated with that nonregulated product.

4. Section V, Transactions With Affiliates, must be arranged by affiliate and not by type of transaction provided. The transactions must be grouped into two categories:

- a. Transactions from the telephone company to its affiliates.
- b. Transactions from the affiliates to the telephone company.

This section must also contain a matrix which shows each type of affiliate transaction and the affiliates involved.

5. Section VI, Cost Apportionment Tables, must have a comments column on each page for explanatory information on apportionment procedures. This must be the last column on the page.

¹ Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 1298 (*Joint Cost Order*), recon., 2 FCC Rcd 6283 (1987), further recon., 3 FCC

Rcd 6701 (1988), *aff'd sub nom.* Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C. Cir. 1990).

² *Id.* at 1328.

6. Section VII. Time Reporting Procedures. must have a matrix which shows the time reporting method used by each employee group.

B. Procedures for Filing Revisions

1. Each carrier must submit five copies of each CAM revision to the Commission on punched paper so that the pages fit into the binders provided by the company. Each copy must indicate all revisions with a vertical line in the right-hand margin. In addition, all revised language must be in bold-face type on each of the five copies. A copy of the transmittal letter must accompany each copy of the revision. Four copies must be filed with the Office of the Secretary. The fifth copy must be delivered to the Chief, Accounting Systems Branch, Accounting and Audits Division, 2000 L Street, N.W., Room 812, Washington, D.C. 20554. An additional copy must be delivered to the Downtown Copy Center, 1114 21st Street, N.W., Washington, D.C. 20036.

2. The transmittal letter that accompanies each revision must have an attachment that lists each page and the last filing date for each page. This attachment should be similar to the check sheet in the tariff filings. The transmittal letter must also have an attachment that provides the following information for each revision: the page number of the revision; the USOA account number, if applicable; the CAM language to be revised; the proposed CAM language; and, a detailed explanation of the reason for the change. This information must be presented in the following format:

PAGE/ USOA ACCOUNT	CHANGE FROM	CHANGE TO	REASON FOR CHANGE
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3. Pages that are deleted should be left in the CAM and labeled "This Page Intentionally Left Blank." Deletion of several continuous pages may be indicated on one page; for example, "Pages 10-20 have been deleted." Any deletions should appear as blank space so that the deletion is apparent.

4. Pages that are added during the year should be renumbered as A, B, C, etc. For example, if a carrier added a new page after page 6 in Section II, this new page will be identified as Page II-6A.

5. By December 31, of each year each carrier must submit a revised CAM that has been reformatted to eliminate blank spaces and repaginated to include pages added during the calendar year. The fourth quarter revisions should be indicated as explained in B.1., above. The copy delivered to the Chief, Accounting Systems Branch and one additional copy must be submitted in three-ring binders with each section separated by dividers.

6. With the exception of the fourth quarter when all companies must file a revised CAM, if a company has no quarterly revisions, it must file five copies of a letter with the Commission indicating that there are no changes. Four copies must be filed with the Office of the Secretary. The fifth copy must be delivered to the Chief, Accounting Systems Branch, Accounting and Audits Division, 2000 L Street, N.W., Room 812, Washington, D.C. 20554. An additional copy must be delivered to the Downtown Copy Center, 1114 21st Street, N.W., Washington, D.C. 20036.

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "PETITION FOR RECONSIDERATION" in CC Docket No. 96-193 has been filed this 25th day of August, 1997 to the Parties of Record.

A handwritten signature in cursive script, reading "Katie M. Turner", written over a horizontal line.

Katie M. Turner

August 25, 1997

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